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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)**

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In re C.B. et al., Persons Coming  
Under the Juvenile Court Law.

C062207

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

(Super. Ct. Nos. JD228767,  
JD228768, JD228769)

Plaintiff and Respondent,

v.

STACEY B.,

Defendant and Appellant.

Appellant Stacey B., the mother of C.B., M.B. and A.B. (the minors),<sup>1</sup> appeals from orders of the juvenile court finding the minors to be persons within the meaning of Welfare and Institutions Code section 300, and denying reunification services. (Welf. & Inst. Code, §§ 300 & 361.5.)<sup>2</sup>

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<sup>1</sup> At the time of their detention, C.B. was six years old, M.B. was 14 years old, and A.B. was 16 years old.

<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

Mother contends there was insufficient evidence to support the juvenile court's finding that the minors came within the provisions of section 300, subdivision (b), and insufficient evidence to support the order denying reunification services. Mother also contends that the jurisdictional and dispositional orders must be reversed because the court-appointed guardian ad litem had no authority to waive the jurisdictional hearing. Mother further contends that, in denying reunification services, the court made no findings under section 361.5, subdivision (b)(13) or section 361.5, subdivision (e), and there is insufficient evidence to imply such findings. We shall affirm the juvenile court's orders.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On December 4, 2008, the Department of Health and Human Services (the Department) filed juvenile dependency petitions on behalf of each of the three minors alleging mother's failure to protect and to provide regular care due to her lengthy history of substance abuse from which she failed and/or refused to rehabilitate, as well as her commission of violent acts against the minors and others. (§ 300, subd. (b).) In particular, the petitions alleged that, following her arrest on November 21, 2008, mother admitted having physically abused her children and the maternal grandmother and further admitted having used methamphetamine one week prior to her arrest. The minors were detained and placed into protective custody.

At the initial hearing on December 9, 2008, the court authorized emergency detention for A.B. and C.B., and ordered M.B. to remain in the custody of her presumed father, Joe A.

At the December 17, 2008 detention hearing, the court exercised jurisdiction over the minors. The court found it was safe to return M.B. to the custody of her presumed father, Joe A., but ordered continued out-of-home placement for A.B. and C.B. due to the substantial danger to their physical health. The court also ordered supervised visitation and reunification services to mother.

The January 2009 jurisdiction/disposition report identified Jose S. as the alleged father of C.B. Jose S. stated he was not interested in obtaining custody of C.B., but was interested in visitation. Joe A., presumed father of M.B., stated that he would take care of M.B. "[i]f she can't be with her grandmother." A search for Phillip D., the alleged father of A.B., was underway.<sup>3</sup>

According to the report, C.B. was in protective custody in a confidential foster home, M.B. was detained in the home of Joe A., and A.B. was living with a foster family. All three of the minors expressed a desire to live with their maternal grandmother. A.B. told the social worker that, on the day of the incident, mother "got drunk . . . and got in a fight with my

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<sup>3</sup> Phillip D. was eventually located at San Quentin Prison, and was later found to be the presumed father of A.B.

sister [M.B.]." She stated that mother's boyfriend, Timothy K. ("T.J."), supplies mother with alcohol, and recalled witnessing mother "getting 'tipsy' from drinking, but never as 'wasted' as the November 21, 2008 incident." A.B. said she did not want to visit mother if mother was under the influence of alcohol or drugs. She noted that mother hurt her feelings when mother said, "I don't really care about you and [M.B.], I just want [C.B.] back."

M.B., who was "highly emotional and cried throughout the interview," told the social worker that mother and "Tim and/or T.J." drink a lot. She recalled that, on the day of the incident, mother "came home and went crazy," yelling at her and hitting her twice in the face, causing it to swell. Mother kicked the maternal grandmother over the couch and, when M.B. attempted to intervene, mother pulled M.B.'s hair. M.B. stated she only feels safe with mother "when [mother] is not drunk."

Mother was interviewed on November 22, 2008, and, at that time, admitted to having a long-term substance abuse problem, stating alcohol was her "drug of choice." She also admitted having used methamphetamine a week prior to her arrest, and that she was drunk at the time of the incident. Mother admitted she could not control her substance abuse and needed residential treatment, and agreed to participate in voluntary services upon her release. However, on December 2, 2008, after being released from jail, mother denied having a problem with drugs or alcohol and stated she would not participate in voluntary services.

The maternal grandmother, Patricia B., stated that mother graduated from a Proposition 36 drug program in May 2006 and remained "clean and sober for about a year, and that was it." She explained that, over the past year, mother left home on and off and would spend an entire week at her boyfriend's house. Mother refused to pay the bills, causing the electricity to be turned off for several days. With regard to the November 21, 2008 incident, Patricia B. recalled that mother returned to the apartment and appeared to be under the influence. She began yelling at Patricia and, when M.B. tried to intervene, mother punched M.B. in the face. Mother continued to fight with M.B., kicking A.B. and Patricia B. in the process. When Patricia B. tried to call the police, mother grabbed the phone from her hand and ripped the cord out of the wall. Mother left the apartment, but returned later and was arrested after Patricia B. contacted law enforcement.<sup>4</sup> M.B. told police that mother takes Soma for a collarbone injury, and that she believed mother also took Valium and drank alcohol. Mother reportedly had "bloodshot eyes, slurred speech, and a strong odor of an alcoholic beverage" when she was arrested.

With regard to visitation, mother failed to attend a scheduled visit on January 5, 2009, calling the next day to explain that she was unable to attend "because she had no gas for her car."

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<sup>4</sup> According to the report, when law enforcement arrived, mother was "passed out and very difficult to wake."

The report recommended that the court sustain the allegations in the petitions. As for disposition, the report noted that mother "has a significant substance abuse problem, and fails to acknowledge her responsibility in seeking services and supports to help mitigate her destructive relationship with drugs," and recommended that all three minors be declared dependent children of the juvenile court and remain in out-of-home placement, with M.B. to remain in the home of her father, Joe A. The report recommended further that, although mother "has an extensive, abusive, and chronic use of drugs and/or alcohol from which she has failed to rehabilitate," the bond between mother and the minors and their desire to see her be successful in substance abuse treatment shows "it would be detrimental not to offer the mother family reunification services." Continued supervised visitation was also recommended "while mother is participating in services."

An addendum report was filed on May 4, 2009, to reassess the Department's prior recommendations regarding services and placement. Noting that mother had failed to engage in substance abuse testing or counseling services, the report concluded that section 361.5, subdivision (b)(13) applied to mother given her criminal history involving substance abuse and her failure to follow conditions of formal probation. While mother had completed the Proposition 36 drug diversion program in May 2006, she had "not made substantial progress in any accessible substance abuse treatment program to ameliorate issues

associated with substance abuse." Mother's continued resistance to participation in an alcohol and other drug (AOD) assessment, substance abuse testing, and counseling, and her "continuous alcohol consumption," demonstrated "her inability to implement life-changes that promote sobriety." The report also noted that mother had failed to visit the minors since their initial detention, and concluded that reunification services should be denied.

According to the addendum report, mother was transported to the emergency room on April 24, 2009, "for issues concerning an overdose." Although mother was breathing on her own, the treating physician spoke with the maternal grandmother and mother's boyfriend/husband, T.J.,<sup>5</sup> "regarding end of life decisions." According to T.J., mother had been upset recently over the removal of the minors from her care. She laid down for a nap and approximately one hour later he found her face down on the bed and unresponsive. He stated he had a prescription for Diazepam for a back injury and found that there were approximately 40 pills missing from the bottle.

The report stated further that, on April 25, 2009, the social worker arrived at the hospital to find that mother's condition had worsened and she was now connected to a ventilator to assist her breathing. On April 30, 2009, the hospital's ICU

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<sup>5</sup> The hospital requested proof of T.J.'s marriage to mother but had not been provided with any documentation as of the date of the addendum report.

social worker, Gina Nelson, informed the Department's social worker that mother "was admitted to the hospital for complications associated with a 'polysubstance overdose'" and was currently on a ventilator and in "'a very bad state,' as she has no upper cortex and brain stem functioning." Nelson indicated the family needs to be prepared to make "end of life" decisions.

The report noted that the maternal grandmother's home had been approved for C.B. and A.B. It was recommended that C.B. be placed with his father, Jose S.; that M.B. be placed with her father, Joe A., and dependency be terminated as to her; and that A.B. be placed with the maternal grandmother.

On May 5, 2009, during a prejurisdictional hearing, mother's counsel discussed with the court the possibility of appointing a guardian ad litem or a conservator on behalf of mother. At counsel's request, the court continued the matter to allow counsel time to research the issue and, if necessary, find a conservator. In the meantime, the court detained A.B. in the custody of the maternal grandmother, released M.B. to her father with authorization to stay at the maternal grandmother's home, and released C.B. to his father. The court granted the maternal grandmother's motion for de facto parent status as to A.B.

A second addendum report filed on May 14, 2009, reiterated the Department's position that mother was subject to the provisions of section 361.5, subdivision (b)(13), stating that mother "continues to show an extensive, abusive, and chronic use

of drugs and/or alcohol as evidenced by her failure to participate in a[n] AOD assessment, substance abuse testing, and/or substance abuse counseling services," as well as the minors' observations that mother was under the influence at the time of her arrest. The report noted further that "mother was recently hospitalized on April 24, 2009, and remains in critical condition based on a 'polysubstance overdose.'" The report concluded that provision of reunification services would not be in the best interest of the minors.

On June 2, 2009, the court held a hearing on mother's motion for reconsideration regarding appointment of a guardian ad litem. The court recalled that it had previously contemplated appointing mother's counsel, Lauren Bowers, as guardian ad litem given her familiarity with the case. However, due to Bowers' concerns "that that may appear as a conflict of interest," the court appointed Christine Reysner, an attorney who "is not a party to this case and has, yet, agreed in a pro bono capacity to operate as [mother's] guardian ad litem," noting that Reysner was knowledgeable in the area of dependency law.

Counsel for the Department stated her understanding, based on prior conversations with mother's counsel, that mother would be waiving services. The court reviewed a waiver of rights form (including a waiver of reunification services) from mother's counsel signed by the guardian ad litem and, after confirming that counsel had gone over the contents of the form with the

guardian, accepted the written waivers, and found them to be "knowing, voluntarily, and intelligently made."

Mother's counsel objected to jurisdiction being founded on subdivision (b) of section 300 as alleged in the petitions stating, "I do not believe that the Court can find that the mother presents a current risk to these children and that a [subdivision] [(g)] petition would be more appropriate in this matter rather than a [subdivision] [(b)] petition. [¶] The mother is incapacitated. It is doubtful that she will regain consciousness. She is unable to place these children at risk of abuse or neglect so therefore I would request that the Court dismiss the [subdivision] [(b)] allegation, instead that the [subdivision] [(g)] petition be sustained. [¶] With regard to services, I am requesting that the Court accept the mother's waiver of services and that she not be provided with reunification services pursuant to the way of her waiver." The Department "acquiesce[d] in a waiver of services in this case notwithstanding a bypass provision that likely applies."

The court adopted the jurisdictional findings outlined in the addendum report by a preponderance of the evidence, sustained the petitions, and adopted the dispositional findings as outlined in the addendum report by clear and convincing evidence. The court denied reunifications services to mother based upon her waiver of those services.

Mother filed a timely notice of appeal.

## **DISCUSSION**

### **I. Sufficiency of the Evidence**

Mother claims that, given her grave medical condition, she did not present a current risk of harm to the minors at the time of the jurisdictional hearing, as required for jurisdiction under section 300, subdivision (b). We disagree.

Section 300, subdivision (b) provides for dependency jurisdiction when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child . . . due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

Mother's history of substance abuse is well documented in the record. While she successfully completed the Proposition 36 drug program in May 2006, she was unable to remain sober thereafter and began to use again regularly to the extent that, by December 2008 she was arrested for the incident which led to removal of the minors. By April 2009, she was in the hospital on a ventilator and had no upper cortex and brain stem functioning as a result of a "polysubstance overdose."

Mother argues that, at the time of the jurisdictional hearing, she was in a coma and the minors were all being cared for; thus, they were not at risk of serious physical harm or

illness in the future. Her argument is misguided. Dependency jurisdiction under section 300, subdivision (b) is proper where the minor "has suffered" serious physical harm or illness. These minors clearly fell within that category at the time jurisdiction was exercised. In the weeks prior to the filing of the dependency petitions, mother admitted having physically abused her children. That evidence alone was sufficient to sustain a jurisdictional finding. The fact that mother also admitted to methamphetamine use and physical abuse of the maternal grandmother in front of the children only adds further weight to the already sufficient evidence. While inquiry regarding the risk of future physical harm or illness is proper for disposition, the juvenile court need not make such a finding to establish jurisdiction in the first instance.

The record contains sufficient evidence that, at the time of the jurisdictional hearing, the minors had suffered serious physical harm. There is no error.

## **II. Guardian Ad Litem's Authority**

Mother contends the court's order denying reunification services must be reversed because the guardian ad litem had "an apparent conflict of interest" and had no authority to waive services on her behalf. The Department argues that the guardian ad litem had authority to stipulate to the waiver of services pursuant to section 361.5, subdivision (b)(14) and had no conflict of interest. As we shall explain, the court's order is supported by the authorized acts of the guardian ad litem.

Following the removal of a minor from parental custody, the parent is ordinarily provided with reunification services.

(§ 361.5, subd. (a).) The juvenile court may deny a parent reunification services at the dispositional hearing provided certain conditions described in section 361.5, subdivision (b) are satisfied. In those circumstances, "the general rule favoring reunification is replaced by a legislative assumption that offering [reunification] services would be an unwise use of governmental resources." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478; *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.)

Reunification services need not be provided to a parent or guardian when the parent or guardian "has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services. [¶] The parent or guardian shall be represented by counsel and shall execute a waiver of services form . . . . The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services." (§ 361.5, subd. (b) (14).)

The record here demonstrates that the trial court complied with the provisions of section 361.5, subdivision (b)(14). Mother's counsel represented to the court that mother would waive services. She presented a waiver of services form and confirmed her discussions with the guardian ad litem regarding the contents of the waiver and the guardian's understanding of that form. The court inquired of the guardian ad litem directly and established her understanding of the waiver. Mother's counsel joined in the waiver with the guardian ad litem. The court found the written waiver of reunification services and trial was "knowing, voluntarily, and intelligently made," and ordered that no services be provided to mother based on the waiver.

Mother does not object to the appointment of the guardian ad litem; instead, she argues the guardian had no authority to waive services on her behalf. She asserts a number of arguments in support of her claim, none of which has merit.

First, she argues the guardian had no authority to stipulate to a waiver of services and trial because doing so was prejudicial to her interests. We disagree. "[A] guardian ad litem's role is more than an attorney's but less than a party's. The guardian may make tactical and even fundamental decisions affecting the litigation but always with the interest of the guardian's charge in mind. Specifically, the guardian may not compromise fundamental rights, including the right to trial,

without some countervailing and significant benefit.'" (*In re M.F.* (2008) 161 Cal.App.4th 673, 680.)

In *In re M.F.*, the appellant mother's rights were compromised at key hearings as a result of the failure to appoint a guardian ad litem. (*In re M.F.*, *supra*, 161 Cal.App.4th at p. 681.) Here, in contrast, the court did appoint a guardian ad litem at the behest of mother's attorney. In the absence of that appointment, mother was unable to meaningfully participate in the proceedings, given her attorney's concern of a conflict of interest, and her own precarious medical state.

Second, mother claims the guardian ad litem had no authority to compromise her fundamental right to a trial in the absence of a countervailing benefit. Indeed, there was a countervailing benefit in the guardian's waiver on behalf of mother, to wit, the ability to render timely decisions so as not to delay the stability and permanence for the minors involved.

Third, mother claims the guardian ad litem's authority was compromised due to her "apparent conflict" between her duty to mother and her "desire to accommodate the court." This, she argues, was exacerbated by the court's desire to hurry the proceedings along, the fact that there was insufficient evidence to support a section 361.5, subdivision (b)(13) finding, and the likelihood that the guardian "may have concluded" strict compliance with the law was not required given mother's tenuous medical state. There is no evidence to support these claims.

The record reflects that the guardian ad litem did indeed agree, "as a friend of the court," to accept the appointment pro bono and had already spoken with mother's counsel and signed the waiver prior to the hearing. Mother does not provide us with any evidence, nor can we find any in the record, from which to infer any impropriety from those actions. Similarly, there is no evidence to suggest that the guardian had any interest adverse to mother, or that the guardian, mother's counsel or the court engaged in any sort of underhandedness or attempted to shortcut the proceedings in any way. Indeed, quite the opposite, as evidenced in part by the court's explanation to family members who attended the various hearings and who were frustrated with continuances due to mother's absence: "[S]he's [mother's] currently in a situation where she's struggling for her life. And, quite frankly, and I want to be sensitive to the children, doesn't look great on that issue right now. [¶] Counsel is asking to make sure that legally we do all that we can to make sure her rights are protected and that's a fair thing. That's why I still want to address releasing the children so there's no prejudice to you in mak[ing] the continuance. The only thing you have to do is come back to court. I know that's a pain, but I got to follow the law, folks. I want to be fair to this lady who is fighting for her life right now and that's the bottom line here."

Finally, mother also reasserts her claim that the guardian ad litem had no authority to waive her right to a jurisdictional

hearing. Given our disposition above of mother's claim of the guardian's lack of authority, and the absence of any authority or analysis in addition to that previously asserted, we reject mother's claim.

### **III. Court Findings to Support Denial of Reunification**

Mother contends the order denying her reunification services must be reversed because the juvenile court failed to make a finding under either section 361.5, subdivision (b)(13) or section 361.5, subdivision (e). The claim lacks merit.

Section 361.5, subdivision (b) allows the juvenile court to deny reunification services under specified circumstances. Section 361.5, subdivision (b)(13) has two prongs: First, the court must find by clear and convincing evidence that "the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol." Second, the court must find that the parent or guardian "has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition . . . or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible."

As requested by the court on March 30, 2009, the Department provided a May 14, 2009 addendum to address the recommendation that services not be provided to mother. The addendum sets forth mother's drug-related criminal history and explains that

reunification services are not recommended pursuant to section 361.5, subdivision (b)(13) due to mother's continued "extensive, abusive, and chronic use of drugs and/or alcohol as evidenced by her failure to participate in a[n] AOD assessment, substance abuse testing, and/or substance abuse counseling services," as well as, among other things, her recent hospitalization "based on a 'polysubstance overdose.'"

The evidence showed mother had a history of alcohol abuse that was extensive, abusive, and chronic. The minors were initially removed on December 4, 2008, due to the violent acts of mother resulting, in part, from her intoxication. Mother admitted having used methamphetamine the week prior to her arrest on November 21, 2008, and admitted having a substance abuse problem requiring residential treatment. By her own admission, mother's substance abuse predated the filing of the petition.

The foregoing evidence also shows that, despite having completed a Proposition 36 drug diversion program in 2006, mother resisted prior court-ordered treatment overall.

(*Karen S. v. Superior Court* (1999) 69 Cal.App.4th 1006, 1010.) At some point between completion of the drug diversion program in May 2006 and the filing of the petition in December 2008, mother admittedly began abusing drugs and alcohol on a regular basis and to the extent she required treatment. Her "polysubstance overdose" just months after the filing of the

petition is further evidence of her failure of prior treatment overall.

The court read the addendum. While the court may not have expressly found that mother came within the provisions of section 361.5, subdivision (b)(13), that finding was implicit from the court's adoption, by clear and convincing evidence, of the findings and conclusions contained in the May 14, 2009 addendum. The court also confirmed the Department's acquiescence in a waiver of services "notwithstanding a bypass provision that likely applies." There is sufficient evidence in the record to support a finding under section 361.5, subdivision (b)(13). Because substantial evidence supports that finding, we need not address mother's claim that the court did not make a finding under section 361.5, subdivision (e).

We find no error in the juvenile court's denial of reunification services to mother.

### **DISPOSITION**

The juvenile court's orders are affirmed.

\_\_\_\_\_, BUTZ, J.

We concur:

\_\_\_\_\_, SCOTLAND, Acting P. J.\*

\_\_\_\_\_, SIMS, J.

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\* Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.